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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Wednesday, February 13, 2008  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2407, H.D. 1 – RELATING TO WORKERS’  
COMPENSATION.**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”). The Department supports the intent of this bill, with suggested  
amendments.

The purpose of this bill is to require professional employment organizations  
(“PEO”) to: (1) register with the Commissioner; (2) maintain separate records for payroll  
and work-related injuries and illnesses; and (3) provide each client company with the  
payroll and loss experience records related to workers’ compensation insurance. This  
bill also prohibits an insurer from issuing a workers’ compensation policy to any PEO  
that is not registered. This version of the bill has a defective effective date of July 1,  
2059.

Since the Commissioner has jurisdiction over insurers (rather than employers),  
the Department recommends that PEO’s register with the Department of Labor and  
Industrial Relations (“DLIR”), rather than with the Commissioner. The Department

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**DCCA Testimony of J.P. Schmidt**  
**H. B. No. 2407, H.D. 1**  
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respectfully requests that references to the Commissioner made on page 1, line 8 and page 2, lines 3-4, in section 1 of the bill and on page 2, line 12 in section 2 of the bill be revised to refer to DLIR.

The Department has no objection to section 2 of the bill adding a new section to Article 14 of the Insurance Code, other than the PEO registration referencing the Commissioner on page 1, line 12.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

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## REVISED TESTIMONY

### COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair  
Rep. Angus L. K. McKelvey, Vice Chair

Testimony Related to HB 2407, HD1  
Wednesday, February 13, 2008  
2:00 p.m.

Conference Room 325

Chair Herkes, Vice Chair McKelvey, and Committee Members:

I am Ernest H. Fukeda, Jr., Chief Operating Officer of Hawaii Employers' Mutual Insurance Company, Inc. (HEMIC). Thank you for the opportunity of offering revised testimony regarding HB 2407 HD1. HEMIC supports the concept of this bill to the extent that it conforms to the National Council of Insurance Legislators (NCOIL) model legislation. HEMIC strongly supports registration of PEOs that clearly identifies the organization, its ownership, and its financial status. We also strongly support the principle that an employer should not be able to escape its experience modification simply by joining a PEO for a few years and re-emerging with a clean modification. This proposed legislation supports both those principles.

For several years NCOIL and the National Association of Insurance Commissioners (NAIC) have been attempting to develop common model legislation/regulation language. NCOIL's model legislation is very global leaving the details required for effective and fair implementation of the legislation to the administrative rule making process. The weakness of NCOIL legislation is that even after the legislation becomes law there is significant uncertainty. For instance, are master policies permitted...coordinated master policies...multiple coordinated policies? How will the premium, payroll and loss experience for the various approaches be reported and tracked? All that and more must be spelled out by administrative rule.

The NAIC draft model attempts to provide much more granularity. However, for that reason it has been slower to evolve. The advantage of combining the NCOIL and NAIC approach, and a major reason the two organizations attempted to jointly develop their model, is to achieve a semblance of state by state uniformity.

While HEMIC supports the passage of HB 2407 HD1 and fully trusts that Hawaii's administrative rule making process will make the bill effective and fair, we understand the concerns of those who prefer that the major details are contained in legislation rather than administrative rules. Therefore, HEMIC would not oppose amending this bill to address registration only while legislators and stakeholders to the workers' compensation system work together to develop future legislation that provides a tighter framework within which the administrative rule making process would be applied to fill in the remaining required details.

Thank you for your time and consideration.

# GOODSILL ANDERSON QUINN & STIFEL

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February 12, 2008

TO: Representative Robert Herkes  
Chair, Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
[CPCtestimony@Capitol.hawaii.gov](mailto:CPCtestimony@Capitol.hawaii.gov)

FROM: Gary M. Slovin, Esq.  
H.B. 2407- Relating to Workers' Compensation  
Hearing Date: Wednesday, February 13, 2008 at 2:00 p.m.

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Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce:

I am Gary Slovin, testifying on behalf of Altres, Inc., a 38-year old Hawaii-based employment services firm. Altres' client base ranges from small, home-based businesses to restaurants and hotels in Waikiki. These diverse businesses share a common thread – they all face the ever-increasing complexities of employment administration and compliance. Through the use of professional employer organization (“PEO”) services, these businesses can reduce labor costs and focus on their customers, while providing their employees and their families comprehensive and affordable employee benefits.

H.B. 2407, HD1 requires professional employment organizations providing workers' compensation to assigned employees to register with the insurance commissioner, and provides that the premiums for this insurance are to be based on the experience rating of the client company. Altres respectfully opposes this measure.

H.B. 2407 is based upon the model legislation developed by the National Conference of Insurance Legislators (NCOIL) to address the need for the insurance industry to have a mechanism to track individual experience and utilization by customers of PEOs. Altres does not oppose H.B. 2407 for the purposes of registration or insurance regulation; rather, we believe that there are better alternatives to the NCOIL model legislation.

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With respect to registration, we recommend the National Association of Profession Employer Organizations' (NAPEO) model legislation package, which has been adopted by 29 states thus far, and which will likely be adopted by more states this year. NAPEO's package has a robust registration requirement, as well as a financial solvency portion that addresses consumer protection issues. Additionally, the package pays careful attention to the areas of employment law and insurance coverage clarification.

With respect to the concern over insurance regulation, we note that, since 2002, the National Association of Insurance Commissioners (NAIC) and the National Council on Compensation Insurance (NCCI) have worked together with NAPEO to address the many areas of concern that the insurance industry has when businesses enter into a PEO relationship. As recently as June 2007, the NAIC adopted a new set of guidelines for the industry to follow when working with PEOs.

Altres believes that H.B. 2407, HD1 lacks the developmental and collaborative efforts of the NAIC initiative. We submit that the NAIC guidelines would provide a better starting point for the development of legislation. Altres opposes H.B. 2407, HD1 and respectfully requests that it be held in committee, in order to provide representatives of the PEO industry, insurance industry and the legislature an opportunity to create legislative changes that are responsible, comprehensive, and protective of Hawaii's workers' compensation system.

Thank you very much for this opportunity to submit testimony.

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